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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,689	08/02/2001	Mark T. Anderson	56240US003	6481
32692	7590	04/20/2004	EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY			LEVY, NEIL S	
PO BOX 33427			ART UNIT	PAPER NUMBER
ST. PAUL, MN 55133-3427			1616	

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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09/920689

ANDERSON

EXAMINER	
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ART UNIT	PAPER NUMBER

1616

DATE MAILED:

This is a communication from the examiner in charge of your application.
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OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 11/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 9 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-85, 87-108 is/are pending in the application.
- Of the above, claim(s) 6, 9-11, 21, 25, 31-34, 36, 39, 40, 42-84, 93-108 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-3, 5, 7, 8, 12-20, 26-30, 41, 85, 87-92 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claims 1-85, 87-108 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6, 9-11, 21, 25, 31-34, 36, 39, 40, 42-84, 93-108 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5.

Claims 1-3, 5, 7, 13-19, 22-24, 26-29, 30, 41 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Stoddart et al WO 0051724.

Stoddart utilizes the instant inorganic particles (p.5, line – 14 –line 3, p. 10) of porous – channeled matrix compositions impregnated with environmentally sensitive actives (p.5, line 9-34) farnesol, geranial, nerol, geranylacetate, for example. The instant similar structured volatile pheromone acetates would be for one desirous of controlling insects, obvious to use, as cited art materials are examples only. The use of the specific pheromone is within the purview of one in the art to select dependent only upon the insect for which control is desired, motivation to incorporate in the Stoddart art matrix is the pheromone protection afforded in the slow release matrix. Silica matrices are disclosed at p. 10, lines 5-15, inclusive of the instant sodium polyacrylate latex, claimed as a structure-directing agent. The X-Ray diffraction peak, as a measure of crystallinity, is indicated as obtainable with the particular material and porosity desired. Either parallel or ~~inter~~ ^{inter} connected channels are shown (p.6, lines 24-34) as in pore size; both determinable by Artisan to use. Metal oxides are at P. 6, lines 11-22.

Claims 1-3, 5, 7, 8, 13-20, 22-24, 26-30, 41, 85, 87, 90, 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stoddart et al WO 0051724 in view of Stucky et al WO 99/37705 and OHNO-4579779.

Stoddart (above) shows incorporation of vaporous actives, including pheromones similar to the instant compounds, in the instant particles of inorganic channeled matrices, but does not fully detail how the matrices materials are prepared. Stucky does. The silica forms used by Stoddart, for example, are shown at p. 22, 23, prepared by incorporation of surfactant (p.23, bottom) into the silica composition to produce particles.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize stable composition of vaporous actives to utilize Stoddart's with the particular means of obtaining the particles exemplified by Stucky. Ohno further shows the instant pheromone thus obvious to incorporate.

It has not clearly been established by Objective showing of some unobvious and/or unexpected results that the administration of the particular form of active, carrier, or the particular Locus to be treated provides any greater level of prior art expectation as claimed. Further, applicant has showed no criticality as to the ingredient actives concentrations, ratios or Application.

The selection of each ingredient and form thereof is result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredients to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

Claims 1, 5, 7, 8, 12, 13, 20, 26, 27, 29, 30, 35, 37, 38, 41, 85, 87, 88, 91, 92 rejected under 35 U.S.C. 102(b) as being anticipated by Nagura et al – EP 0131783.

Particles of inorganic matrices (~~P.6~~ lines 18-20) on a polymeric vehicle contain the instant pheromones, surfactant and latexes (P.241, Example 6, 7).

Claims 7, 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 already requires pheromone – 7 does not further limit 1. Same with 37.

Applicant's arguments filed on November 3 have been fully considered but they are not persuasive. Applicant's arguments have been considered in the rejection presented. Amendment has resulted in with drawl of rejections of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Art Unit: 1616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Levy/LR
April 6, 2004

NEIL S. LEVY
PRIMARY EXAMINER